

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK S. SICKORA	:	CIVIL ACTION
	:	
v.	:	
	:	
THE NORTHWESTERN MUTUAL LIFE	:	
INSURANCE COMPANY	:	No. 00-6194

MEMORANDUM ORDER

This action arises from an insurance dispute. Plaintiff asserts claims for breach of contract, breach of the covenant of fair dealing and bad faith. Plaintiff, a doctor, alleges that defendant wrongly denied him total disability benefits under three policies. Defendant asserts an affirmative defense that plaintiff was not entitled to benefits because he was not under the regular care of a physician as the policies required.

Presently before the court are plaintiff's Motions to Strike Objections and to Compel Answers to Plaintiff's Interrogatories and Requests For Production. Defendant has filed cross-Motions for a Confidentiality Order and for Bifurcation of the litigation into benefits and bad faith stages.

Plaintiff is entitled to discovery of drafting histories relating to the "care of a physician" clauses in the subject policies. Plaintiff requests documents relating to the change in insurance coverage language between the first two policies and the third policy. He requests only such discovery as relates to the drafting history of the "care of a physician"

clause. Discovery of drafting history is permissible although the question of ambiguity has not yet been decided. See Nestle Food Corp. v. Aetna Cas. & Sur. Co., 135 F.R.D. 101, 106 (D.N.J. 1990).

Plaintiff also requests information concerning educational and training materials, claims handling and related procedures. Plaintiff is entitled to discover documents which may show that defendant has interpreted this provision differently in resolving similar claims. See Champion Int'l Corp. v. Liberty Mut. Ins. Co., 129 F.R.D. 63, 67 (S.D.N.Y. 1990) (party may discover claims manuals and related documents that might facilitate interpretation of disputed policy provisions). Plaintiff, however, requests all training manuals and claim processing data. This request is overly broad, unduly burdensome and, in large part, irrelevant. The court will thus limit production to information pertinent to the disputed policy provision. Defendant will be required to produce all such documents pertinent to its interpretation and application of the care of a physician clause under the types of policies issued to plaintiff.

Plaintiff's request for the identities of all former claims personnel is overly broad. Plaintiff, however, may reasonably seek discovery from those employees who handled his claim or who exercised responsibility in interpreting and

applying the disputed provision in resolving similar claims during a reasonable period prior and subsequent to the denial of benefits to him.

Plaintiff also requests discovery of any complaints made to defendants or the Pennsylvania Department of Insurance concerning defendant's handling, processing or review of claims made under disability insurance policies issued from 1995 to the present and all information about any actions which resulted in an award of punitive damages or in which defendant paid extra-contractual damages from 1990 to the present. Such all encompassing discovery of prior claims is overly broad and irrelevant as there is no threshold requirement that the underlying facts and circumstances be similar to the instant case. See Northern River Ins. Co. v. Greater New York Mut. Ins. Co., 872 F. Supp. 1411, 1412 (E.D. Pa. 1995); Fidelity & Deposit Co. of Md. v. McCulloch, 168 F.R.D. 516, 526 (E.D. Pa. 1996); Shellenberger v. Chubb Life Am., 1996 WL 92092, *3 (E.D. Pa. Feb. 29, 1996).

Defendant is entitled to maintain the confidentiality of its training material and Claims Manual. This is proprietary information and its general disclosure poses a significant risk of injury to defendant. See Fed. R. Civ. P. 26(c)(7); Adams v. Allstate Ins. Co., 189 F.R.D. 331, 332-33 (E.D. Pa. 1999). Defendant created the Claims Manual and training materials at

considerable expense. General access to the Manual would injure it competitively and insureds could use information in the Manual to facilitate fraud. Plaintiff has made no showing or claim that he would suffer any harm from maintaining the confidentiality of these materials.

Defendant has not shown that its proposed bifurcation would promote convenience, expedition or economy, or is necessary to avoid prejudice. See Fed. R. Civ. P. 42(b); Zurich Ins. Co. v. Health Sys. Integration, Inc., 1998 WL 211749, * 3 (E.D. Pa. Apr. 30, 1998) (declining to bifurcate bad faith claim and claim regarding insurer's obligations under policy); Reading Tube Corp. v. Employers Ins. of Wausau, 944 F. Supp. 398, 404 (E.D. Pa. 1996); Mangabat v. Sears Roebuck & Co., 1992 WL 211561, *1 (E.D. Pa. August 26, 1992).

ACCORDINGLY, this day of October, 2001, upon consideration of plaintiff's Motions to Strike Objections and to Compel Answers to Plaintiff's Interrogatories and Requests For Production (Doc. # 8, all parts), **IT IS HEREBY ORDERED** that said Motions are **GRANTED** in that within twenty days defendant shall respond to: Requests for Production #17, 18, 19 and 20 to the extent the documents relate to the "care of a physician" provision in the three policies; Interrogatories #10 and 11 to the extent that such personnel handled plaintiff's claim or similar claims proximate in time requiring interpretation and

application of the disputed clause; Interrogatory #9 and Requests for Production #11, 12, 13 and 14 related to the "care of a physician" clause; and, said Motion is otherwise **DENIED**. **IT IS FURTHER ORDERED** that upon consideration of defendant's cross-Motion for Confidentiality Order and Bifurcation (Doc. #10, all parts), and plaintiff's response thereto, the Motion for Confidentiality Order is **GRANTED** and the Motion for Bifurcation is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.